
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CASE NO. 05-76217

(Consolidated with Case No. 05-75295 and 05-77116)

UNITED BROTHERHOOD OF CARPENTERS & JOINERS, LOCAL
UNION 586,
UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF
AMERICA, AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD

Petitioners,

vs.

MACERICH MANAGEMENT COMPANY and
MACERICH PROPERTY MANAGEMENT COMPANY

Respondents.

MACERICH MANAGEMENT COMPANY and
MACERICH PROPERTY MANAGEMENT COMPANY

Petitioners,

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, LOCALS 586 and 505,

Intervenor,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD CASE NOS. 20-CA-29636-1
AND 20-CA-29918-1 (FORMERLY 32-CA-18123-1)

OPPOSITION TO MOTION OF THE NATIONAL LABOR RELATIONS
BOARD TO RECALL THE MANDATE AND SETTLE THE JUDGMENT
PURSUANT TO RULE 19

Thomas J. Lease, State Bar No. 84638
Stacey McKee Knight, State Bar No. 181027
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
Telephone: (310) 788-4400
Fax: (310) 788-4471

Counsel for Respondents
MACERICH MANAGEMENT COMPANY and
MACERICH PROPERTY MANAGEMENT COMPANY

I. INTRODUCTION AND SALIENT FACTS

Respondents Macerich Management Company and Macerich Property Management Company (“the Macerich Parties”) submit the following Opposition to the Motion of Petitioner National Labor Relations Board (“the Board”) to Recall the Mandate and Settle the Judgment Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 19.¹

On August 25, 2008, this Court entered judgment in the action of *United Brotherhood of Carpenters, Local Union 586 v. NLRB*,² which consolidated Appeal Nos. 05-75295, 05-76217, and 05-77116. Respondents filed a Petition for Panel Rehearing and Rehearing En Banc (“Petition for Rehearing”) on October 8, 2008 for Appeal Nos. 05-76217 and 05-77116. This Court entered a mandate on Appeal No. 05-75295 on October 17, 2008; however, the Petition for Rehearing on consolidated Appeal Nos. 05-76217 and 05-77116 is still pending.

This Court should deny the Board’s Motion to Recall the Mandate and Settle the Judgment because this Court has only issued a mandate for Appeal No. 05-75295 and no final disposition on the Petition for Rehearing on Appeal Nos. 05-76217 and 05-77116 has been issued. As such, the judgment addresses issues that are subject to the Macerich Parties’ Petition for Rehearing.

II. JUDGMENT CANNOT BE SETTLED PURSUANT TO FRAP 19 BECAUSE NO MANDATE HAS BEEN ISSUED IN THIS ACTION.

Pursuant to FRAP 41 (d)(1), filing a petition for rehearing will stay final judgment in an action until that petition is disposed of and a mandate is issued. An

¹ Respondents have filed an Opposition because the Board’s Motion has not been limited to Appeal No. 05-75295 and applies to judgment of the entire action.

² 540 F.3d 957 (9th Cir. 2008).

appellate court judgment is not final until a mandate has been issued. *See Mariscal-Sandoval v. Ashcroft*, 370 F.3d 851, 856 (9th Cir. 2004). The Macerich Parties filed a Petition for Rehearing on October 8, 2008 for Appeal Nos. 05-76217 and 05-77116 and the Petition for Rehearing is still pending.

The Board's request that judgment be settled should not be granted because it attempts to settle a judgment that implicates rulings that remain subject to the Petition for Rehearing (on Appeal Nos. 05-76217 and 05-77116) and could be affected if the Petition for Rehearing is granted. Additionally, judgment cannot be settled as to one case (Appeal No. 05-75295), but not as to the other cases (Appeal Nos. 05-76217 and 05-77116) in this action because the order issued by this Court on August 25, 2008 and the Proposed Judgment submitted by the Board on September 25, 2008 affects all of the cases in this action.

III. CONCLUSION

The Board's Motion to Recall the Mandate and Settle the Judgment is premature because this Court has not entered final judgment on all the cases in this action. Therefore, this Court should deny the Board's Motion.

Date: November 21, 2008

KATTEN MUCHIN ROSENMAN LLP

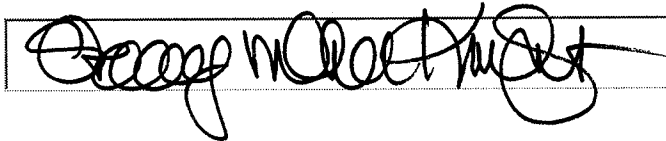
By /s/ Stacey McKee Knight
Stacey McKee Knight
Attorney for Respondents MACERICH
MANAGEMENT COMPANY and MACERICH
PROPERTY MANAGEMENT COMPANY

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When All Case Participants are Registered for the
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